

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAMUEL HELM,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

No. C 10-03057 CW
CR 08-00672 CW

ORDER DENYING
CERTIFICATE OF
APPEALABILITY AND
DENYING APPLICATION
TO PROCEED IN FORMA
PAUPERIS ON APPEAL

On July 9, 2010, Movant Samuel Helm, a federal prisoner incarcerated at the Federal Correctional Institution in Herlong, California, filed a motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255. On November 22, 2010, this Court entered an order denying the § 2255 motion. On January 7, 2011, Movant filed a notice of appeal and, on January 20, 2011, he filed a motion to proceed in forma pauperis on appeal.

Movant's right to appeal the Court's denial of his § 2255 motion is governed by 28 U.S.C. § 2253(c), which states,

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--
(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c)(1)-(3). A certificate of appealability should be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

The Court certifies in accordance with 28 U.S.C. § 2253 that, for the reasons set forth in the November 22, 2010 Order Denying Motion to Vacate, none of the issues raised in the motion involves a substantial showing of the denial of a constitutional right. The certificate of appealability is denied. Accordingly, Movant's motion to proceed in forma pauperis on appeal is denied.

IT IS SO ORDERED.

Dated: 1/27/2011


CLAUDIA WILKEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

USA et al,

Case Number: CR08-00672 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

SAMUEL GASTON HELM, JR. et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 27, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Samuel Gaston Helm, Jr.
12330-111
Federal Correctional Institution - Herlong
P.O. Box 800
Herlong, CA 96113

Dated: January 27, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk